CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

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The Fifth Amendment to the Constitution of the United States of America, Vol. 1, U. S. Code, pp. XLIV and XLV.

"ARTICLE V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

STATUTES INVOLVED

District of Columbia Revenue Act of 1939, Act of July 26, 1939, 53 Stat. 1087, ch. 367, as amended by the Act of February 2, 1942, 56 Stat. 42, ch. 33, and by the Act of June 22, 1942, 56 Stat. 376, ch. 433:

Section 2(b) [Sec. 47-1502(b) D. C. Code, 1951, Supp. VIII]:

"Sec. 2(b) *Tax on Corporations.*—There is hereby levied for each taxable year upon the taxable income from District of Columbia sources of every corporation, whether domestic or foreign (except those organizations expressly exempt under paragraph (d) of this section), a tax at the rate of 5 per centum thereof: *Provided, however,* That income derived from the procurement of orders for the sale of personal property by means of telephonic communication, written correspondence, or solicitation by salesmen in the District where such orders require acceptance without the District before becoming binding on the purchaser and seller and title to such property passes from the seller to the purchaser without the District is not from District of Columbia sources: *Provided, further,* That income from the sale of personal property to the United States is not from District of Columbia sources, unless the taxpayer is engaged in business in the District and such property is delivered for use within said District."

Section 4(a) and Section 4(b) [Sec. 47-1504(a) and Sec. 47-1504(b), D.C. Code, 1951, Supp. VIII]:

"Sec. 4(a) *Definition.*—The words 'gross income', as used in this title, include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not immune from taxation under the Constitution, or income derived from professions, vocations, trades, businesses, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership, or use of, or interest

in, such property; also from rent, royalties, interest, dividends, securities, or transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

"(b) *Of Corporations.*—In the case of any corporation, gross income includes only the gross income from sources within the District of Columbia. The proper apportionment and allocation of income with respect to sources of income within and without the District may be determined by processes or formulas of general apportionment under rules and regulations prescribed by the Commissioners."

Section 5(a) (6) [Sec. 47-1505(a) (6) D.C. Code, 1951, Supp. VIII]:

"Sec. 5(a) *Items of Deduction.*—In computing net income there shall be allowed as deductions:

* * * * *

"(6) *Intercompany Dividends.*—In the case of a corporation, the amount received as dividends from a corporation which is subject to taxation under this title."

Section 2(d) (9) [Sec. 47-1502(d) (9) D.C. Code, 1951, Supp. VIII]:

"Sec. 2(d) *Exemptions from Tax.*—The following organizations shall be exempt from taxation under this title:

* * * * *

"(9) Banks, insurance companies, building and loan associations, and companies, incorporated or otherwise, which guarantee the fidelity of any individual or individuals, such as bonding com-

panies, which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District of Columbia;"

District of Columbia Income and Franchise Tax Act of 1947, 61 Stat. 328, ch. 258, as amended by the Act of May 3, 1948, 62 Stat. 206, ch. 246, and by Title IV, District of Columbia Revenue Act of 1949, 63 Stat. 112, ch. 146, and by Title XII, of the District of Columbia Public Works Act of 1954, 68 Stat. 101, ch. 218:

Section 4(h), Article I, Title I (Sec. 47-1551c(h), D. C. Code, 1951).

"SEC. 4. GENERAL DEFINITIONS.—For the purposes of this article and wherever appearing herein, unless otherwise required by the context—

* * *

"(h) The words 'trade or business' include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity in the District of Columbia; and include the performance of the functions of a public office:[1] *Provided, however*, That the words 'trade or business' shall not include, for the purposes of this article—

"(1) Sales of tangible personal property whereby title to such property passes within or without the District, by a corporation or unincorporated business which does not physically have or maintain an office, warehouse, or other place of business in the District, and which has no officer, agent, or

[1] As originally enacted in 1947, Sec. 4(h) ended with the words "public office." The proviso to this section was added in its entirety by the Act of May 3, 1948, 62 Stat. 206, ch. 246.

representative having an office or other place of business in the District, during the taxable year; or

"(2) Sales of tangible personal property by a corporation or unincorporated business which does not maintain an office or other place of business in the District and which has no office, agent, or representative in the District except for the sole purpose of doing business with the United States, but such corporations and unincorporated businesses shall be subject to the licensing provisions in title XIV of this article.

"For purposes of this proviso, the words 'agent' or 'representative' shall not include any independent broker engaged independently in regularly soliciting orders in the District for sellers and who holds himself out as such.'

"(n) The word 'dividend' means any distribution made by a corporation (domestic or foreign) to its stockholders or members, out of its earnings, profits, or surplus (other than paid-in surplus), whenever earned by the corporation and whether made in cash or any other property (other than stock of the same class in the corporation if the recipient of such stock dividend has neither received nor exercised an option to receive such dividend in cash or in property other than stock instead of stock) and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation: *Provided, however*, That in the case of any dividend which is distributed other than in cash or stock in the same class in the corporation and not exempted from tax under this article, the basis of tax to the recipient thereof shall be the market value of such property at the time of such distribution: *And provided, however*, That the

word 'dividend' shall not include any dividend paid by a mutual life insurance company to its shareholders."

Section 1(g) Article I, Title II (Sec. 47-1554(g), D. C. Code, 1951)

"SEC. 1. The following organizations shall be exempt from taxations under this Article:

* * *

"(g) Banks, trust companies, building and loan associations, insurance companies, companies which guarantee the fidelity of any individual or individuals, such as bonding companies and companies which furnish abstracts of title or which insure titles to real estate, all of which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District."

Section 1, Article I, Title III (Sec. 47-1557, D. C. Code, 1951).

"SEC. 1. NET INCOME.—For the purposes of this article and wherever appearing herein, unless otherwise required by the context, the words 'net income' mean the gross income of a taxpayer less the deductions allowed by this article."

Section 2(a), Article I, Title III (Sec. 47-1557a.(a), D. C. Code, 1951).

"SEC. 2. GROSS INCOME AND EXCLUSIONS THEREFROM.—(a) The words 'gross income' include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form

paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not exempt under this article, or income derived from any trade or business or sales or dealings derived from any trade or business or sales or dealings in property whether real or personal, other than capital assets as defined in this article, growing out of the ownership, or sale of, or interest in, such property; also from rent, royalties, interest, dividends, securities, or transactions of any trade or business carried on for gain or profit, or gains or profits, and income derived from any sources whatever."

Section 2, Article I, Title V (Sec. 47-1561(a)(c)), Supp. VIII, D. C. Code, 1951).

"Each of the following persons shall file a return with the Assessor stating specifically the items of his gross income and the items claimed as deductions and credits allowed under this article, and such other information for the purpose of carrying out the provisions of this article as the Assessor may require:

"(c) (1) CORPORATIONS.—Every corporation engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of title X. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or are engaged in or carrying on the trade or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns.

"(2) Affiliated corporations shall file separate returns unless permitted by the Assessor to file consolidated returns."

Section 1 and 2, Article I, Title VII (Sec. 47-1571 and 47-1571a., D. C. Code, 1951).

"SEC. 1. TAXABLE INCOME DEFINED.—For the purposes of this title, and unless otherwise required by the context, the words 'taxable income' mean the amount of net income derived from sources within the District within the meaning of title X of this article."

"SEC. 2. IMPOSITION AND RATE OF TAX. — For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 5 per centum upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under title II of this article).